

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20070743

1. ACTION REQUESTED/PURPOSE: Authorize selection of SunTrust Bank to provide up to \$10,000,000 in loans to be secured by special assessments for a three year period that will be used for permanent financing of MSBU Projects and approve the form of a master loan agreement. Authorize chairman to sign a resolution selecting SunTrust, approving SunTrust's term sheet and approving the form of a master loan agreement.

2. FUNDING SOURCE: MSBU Assessments of Property Owners Benefiting From Improvements

3. WHAT ACTION ACCOMPLISHES: Allows the continuation of a long term debt financing program for MSBU Projects without pledging the Non-Ad Valorem Debt Capacity of the County. Provides Private Placement Financing for MSBU Projects.

4. MANAGEMENT RECOMMENDATION: Recommend Acceptance of SunTrust Bank for participation in the Term Loan Assessment Program (#3) and approval of master loan agreement.

5. Departmental Category:

CIA

6. Meeting Date: May 29, 2007

7. Agenda:

- Consent
- Administrative
- Appeals
- Public
- Walk-On

8. Requirement/Purpose: (specify)

- Statute
- Ordinance
- Admin. Code
- Other

9. Request Initiated:

Commissioner
Department Administrative Services
Division Budget Services
By: Dinah Lewis, Admin Services Director
[Signature]

10. Background: Lee County has been utilizing a Term Loan Assessment Program ("Program") to fund the long term financing of projects associated with Municipal Service Benefit Units (MSBU's) for over seven years. The Program was structured to accomplish the following:

- (1) Reduce the document preparation costs by using the same approved documents for various projects
- (2) Establish continuity in the rates that are set for all financings in the Program by using the same formula
- (3) Provide continuity in the prepayment ability for all MSBU's
- (4) Allow for faster processing timetable due to having documents and rate formulae already in place.

On September 28, 1999 the Board of County Commissioners approved execution of a commitment letter with SunTrust Bank for Term Loan Assessment Program #1 in the amount of \$5,000,000 for a three-year period to provide permanent financing for MSBU Projects. The effective date did not begin until the first loan was initiated in August, 2000. That program expired in August, 2003.

Background continued on Page 2

11. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>[Signature]</i>				S. [Signature] 5/17/07	gs	M/T 5/17/07	5/17/07	10/16/07	<i>[Signature]</i> 5-17-07

12. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
 COUNTY ADMIN. JC
 5/17/07
 10:45 AM
 COUNTY ADMIN
 FORWARDED TO:
 5/17 3:30 PM

Rec. by CoAtty
 Date 5/16/07
 Time: 2:35 PM
 Forwarded to:
 Admin.
 5/17/07 4:40 AM

Blue Sheet #20070743 (Continued)

On September 30, 2003 after the issuance of an RFP, SunTrust Bank was selected for a new Term Loan Assessment Program (#2) for a three-year period which began on June 4, 2004 (after initiation of the first loan), and expires on June 4, 2007.

On March 13, 2007, the County's Financial Advisor, Public Financial Management, Inc. (PFM) on behalf of the county issued an RFP for a new Term Loan Assessment Program (#3) to nine banks. Two banks (SunTrust Bank and BB&T) responded.

Details of the Proposals

SunTrust Bank

Term of the Commitment: 3 Years
Commitment Amount: \$10,000,000 (Cumulative Loan Amount)
Minimum Loan Amount: \$50,000
Prepayment: Any amount may be prepaid with no penalty.
Term of the Loans: 3, 5, 10 or 15 Years
Bank Counsel Fee: \$2,500
Index: H-15 Swap Index

An Interest Rate Swap is a transaction in which two counterparties exchange interest payment streams of differing character based upon an underlying notional principal amount. There are three main types – coupon swaps, basis swaps and cross currency swaps. The H-15 swap is a coupon swap.

The H-15 Swap Index is found on the Federal Reserve's website. This rate focuses upon the mid-market calculations of swap rate averages in the swap market. The rates are for the Fixed Rate Payer (someone who pays a fixed rate in an interest rate swap in exchange for a floating rate payment) in return for receiving a three month LIBOR (London Interbank Offered Rate). A percentage adjustment is added depending upon the term of the loan and whether the loan is Bank Qualified or Non-Bank Qualified. Non-Bank Qualified rates are based upon customers that issue greater than \$10 million in debt in one calendar year.

BB&T Government Finance

Term of the Commitment: 1 Year
Commitment Amount: Not Specified
Minimum Loan Amount: Not Specified
Prepayment: County may prepay in whole but not in part without penalty
Term of the Loans: Up to 15 Years
Bank Counsel Fee: Not Specified
Index: LIBOR Swap Rate

The LIBOR Swap Rate is a rate based upon rates that banks throughout the world charge for inter-bank deposits. The calculation incorporates variables such as time, maturity and currency rates. The rate is adjusted by basis points depending upon whether the loan is Bank-Qualified or Non-Bank Qualified.

Analysis

Interest rates on the previous tax-exempt term loan agreements were stated as a percent of US Treasury Note yields. Recently, the Federal Reserve Board ("FRB") has raised the federal funds rate 17 times in a row, a quarter-point each quarter from June 2004 to June 2006 in order to reduce the money supply and control inflation. High short-term US Treasury rates are a side effect of that action. The general interest rate market, and particularly the tax-exempt market, is not as severely impacted by the FRB action. Using a broader general market rate, such as LIBOR, is in Lee County's best interest and more reflective of actual market conditions.

The terms of the SunTrust proposal provided more flexibility to the County. Any amount could be prepaid and the term of the commitment is for three years – not one. BB&T did not specify a commitment amount or minimum loan amount.

A comparison of the two indices was made by the County's Financial Advisor for a hypothetical 10 year loan for \$1,000,000 to be closed on May 1, 2007. The BB&T total debt service was \$1,262,665. The SunTrust total debt service was \$1,295,590. In this instance there was little difference between the use of the LIBOR Swap Rate by BB & T and the H-15 Swap Rate by SunTrust. However, as indicated earlier, SunTrust's proposal was for a longer period and provided more detail including a total commitment amount, minimum loan amount and an amount for bank counsel fee. The County has successfully utilized SunTrust for the Term Loan Assessment Program period that will soon expire.

Master Loan Agreement

The resolution requested for approval in this agenda item will accept the proposal of SunTrust Bank to provide a \$10,000,000 loan facility within the terms of SunTrust Bank's proposal (Exhibit A of the resolution) and approve the "Form of the Loan Agreement" (Exhibit B of the resolution).

Summary

Each MSBU project and the financing thereof will be brought to the BOCC for approval prior to initiation of a draw against the \$10,000,000.

The term of the agreement will not start until the first loan is initiated.

The Term Loan Assessment Program will continue as one of several methods to meet the need for long term financing of capital projects – especially those financed through MSBU's. Other options depending upon the project amount include bank loans and bond issuance supported by special assessments.

	B B & T	SunTrust
Amount	No amount specified – One year only	Up to \$10,000,000 – 3 year commitment
NBQ Rate Assessment Only	Rate to be set at the equivalent of 72% of comparably maturity LIBOR swap rates plus 85 bps. 15 year LIBOR swap rate would be determined by subtracting the difference from the 30 year LIBOR swap rate from the 10 year LIBOR swap rate. One fourth of that result is added to the 10 year LIBOR swap rate to achieve 15 year LIBOR swap rate. Maturities up to 15 years only.	3 Year – 3 yr H-15 Swap Index times 105% 5 Year – 5 yr H-15 Swap Index times 104% 10 Year – 10 yr H-15 Swap Index times 98% 15 Year – 10 yr H-15 Swap Index times 100% (revised) 20 Year – Revised - 10 yr H-15 Swap Index times 100%
NBQ Rate with Covenant to Budget	Rate to be set at the equivalent of 70% of comparably maturity LIBOR swap rates plus 90 bps. Maturities up to 15 years only and the same 15 year LIBOR swap rate calculation as above.	3 Year – 3 yr H-15 Swap Index times 103% 5 Year – 5 yr H-15 Swap Index times 102% 10 Year – 10 yr H-15 Swap Index times 96% 15 Year – 10 yr H-15 Swap Index times 98% (revised) 20 Year – Revised - 10 yr H-15 Swap Index times 98%
BQ Rate Assessment Only	Rate to be set at the equivalent of 70% of comparably maturity LIBOR swap rates plus 52 bps. Maturities up to 15 years only and the same 15 year LIBOR swap rate calculation as above.	3 Year – 3 yr H-15 Swap Index times 87.5% 5 Year – 5 yr H-15 Swap Index times 87% 10 Year – 10 yr H-15 Swap Index times 82% 15 Year – 10 yr H-15 Swap Index times 87% 20 Year – Revised - 10 yr H-15 Swap Index times 87%
BQ Rate with Covenant to Budget	Rate to be set at the equivalent of 68% of comparably maturity LIBOR swap rates plus 56 bps. Maturities up to 15 years only and the same 15 year LIBOR swap rate calculation as above.	3 Year – 3 yr H-15 Swap Index times 85.5% 5 Year – 5 yr H-15 Swap Index times 85% 10 Year – 10 yr H-15 Swap Index times 80% 15 Year – 10 yr H-15 Swap Index times 85% 20 Year – Revised - 10 yr H-15 Swap Index times 85%
Prepayment	County may prepay in whole but not in part on any payment date without penalty.	No prepayment penalty.
Notes	All costs are to be paid by the County. No estimated on Bank Counsel fee.	Minimum Loan Amount: \$50,000 Bank reserves right to review the location and structure of each MSBU and request non-ad Valorem pledge. Revised: A 20 year amortization with a balloon maturity date that may not exceed a 15 year maturity for transactions larger than \$1.5 million. If the loan has not been paid by the maturity date, the balance would be due in full and would require either pay off or refinancing Bank Counsel Fee: \$2,500

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA APPROVING A \$10,000,000 LOAN FACILITY WITH SUNTRUST BANK TO FINANCE AND REFINANCE THE COSTS OF VARIOUS CAPITAL PROJECTS IN THE COUNTY; AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH SAID BANK IN ORDER TO SECURE SAID FACILITY; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE FOR THIS RESOLUTION.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of the Florida Constitution, Chapter 125, Florida Statutes, and other applicable provisions of law.

SECTION 2. DEFINITIONS. When used in this resolution, terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement to be executed between SunTrust Bank (the "Bank") and Lee County, Florida (the "County") the form of which is attached hereto as Exhibit B, unless the context clearly indicates a different meaning.

The words "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms shall refer to this Resolution.

Words importing the singular number include the plural number, and vice versa.

SECTION 3. FINDINGS. It is hereby ascertained, determined and declared:

(A) That there is presently, and there will be in the future, a need to construct, acquire and equip certain capital improvements and public facilities within certain municipal service benefit units within the County (the "Projects").

(B) The Bank has provided the County with a proposal (the "Proposal") for a \$10,000,000 loan facility for the purposes described herein and in the Loan Agreement. The Proposal is attached hereto as Exhibit A.

(C) That amounts borrowed under the Loan Agreement shall be repaid solely from the Designated Revenues described in the Loan Agreement. Such Designated Revenues shall include (i) moneys derived from special assessments levied against real property owners within each particular improvement area, (ii) at the option of the Bank, certain legally available non-ad valorem revenues budgeted and appropriated by the County each year and (iii) proceeds of Loans.

SECTION 4. APPROVAL OF LOAN FACILITY AND ACCEPTANCE OF PROPOSAL. The County hereby approves the \$10,000,000 loan facility to be provided by the Bank pursuant to the terms of the Proposal attached hereto as Exhibit A. The County hereby accepts the terms and provisions of the Proposal.

SECTION 5. AUTHORIZATION OF LOAN AGREEMENT. Loans under the loan facility described in Section 4 and the repayment of such Loans by the County shall be pursuant to the terms and provisions of the Loan Agreement. The County hereby authorizes the Chair (or Vice-Chair in his absence or unavailability) and the Clerk (or a Deputy Clerk in his absence or unavailability) to execute and deliver on behalf of the County the Loan Agreement by and between the County and the Bank substantially in the form attached hereto as Exhibit B, with such changes, insertions and additions as they may approve, their execution thereof being evidence of such approval.

SECTION 6. LIMITED OBLIGATION. The obligation of the County to repay the Loans under the Loan Agreement is a limited and special obligation payable from Designated Revenues solely in the manner and to the extent set forth in the Loan Agreement and shall not be deemed a pledge of the faith and credit or taxing power of the County and such obligation shall not create a lien on any property whatsoever of or in the County other than the Designated Revenues.

SECTION 7. GENERAL AUTHORIZATION. The Chair, Vice-Chair, County Manager and Clerk are hereby authorized to execute and deliver such documents, instruments and contracts, whether or not expressly contemplated hereby, and are hereby authorized and directed to do all acts and things required hereby or thereby as may be necessary for the full, punctual and complete performance of all the terms, covenants, provisions and agreements herein and therein contained, or as otherwise may be necessary or desirable to effectuate the purpose and intent of this Resolution.

SECTION 8. REPEAL OF INCONSISTENT DOCUMENTS. All ordinances, resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

SECTION 9. EFFECTIVE DATE. This Resolution shall become effective immediately upon its adoption.

ADOPTED, this 29th day of May, 2007.

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

(SEAL)

By: _____
Chair

ATTEST:

Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Office of the County Attorney

EXHIBIT A

Bank's Proposal



Pamela W. Peters
Phone: 239-277-2505
Fax: 239-277-2576
E-Mail: pamela.peters@suntrust.com

March 23, 2007-Amended

Lauren Shelton, Consultant
Public Financial Management
13350 Metro Parkway, Suite 302
Fort Myers, FL 33966

Jim Lewin, Fiscal Analyst
Lee County Florida
2115 Second Street
Fort Myers, FL 33901

To Whom It May Concern:

Suntrust Bank is pleased to offer the following terms and conditions in response to the Request for Proposal for the Term Loan Assessment Program from 2007 through 2010.

Borrower: Lee County, Florida (the "County")

Purpose: The Term Loan- Assessment Program will be used to fund the acquisition and construction of various improvements for MSBU projects within the County.

Amount: Up to Ten Million Dollars (\$10,000,000.00). Minimum amount of each term loan facility will be \$50,000.00.

Maturity: The Term Loan Program will be in effect for three years beginning in 2007, with an expiration of June 30, 2010. During the draw period of the Term Loan Program, expiring on June 30, 2010, the County will close various Term Loan facilities, with a minimum amount of \$50,000.00 with maturity options of 3,5, 10, or 15 years. Aggregate Term Loans outstanding may not exceed Ten Million (\$10,000,000.00.), *excluding the balance of any loans already existing with SunTrust Bank.*

Terms: Interest payments on the outstanding principal balance of each Term Loan will be calculated on a 360 day basis and will be paid semiannually on May 1 and November 1 of each year. The first interest payment for each Term Loan may be capitalized and paid from proceeds of the initial draw. The principal amount of each Term Loan will be structured to provide approximately level debt service in each of the years through maturity. Principal payments will be due annually on May 1.

Prepayment: The County may repay all or a portion of the outstanding principal of the term loans at any time without incurring a penalty.



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Fee: *There will be an Attorney Review fee of \$2,500.00 for the initial closing of the Term Loan Program.* Documents will be prepared by the County's Bond Counsel, subject to review by Bank Counsel. County to furnish an opinion from Nabors, Giblin & Nickerson, PA, Bond Counsel, approving the legality of the Term Loan Assessment Program, together with the closing certificates and documents related to the initial and subsequent transactions.

Interest Rates:

Fixed Rates to be established 3 days prior to closing of individual Term Loans, using the Federal Reserve H-15 swap Rate for the corresponding term of the facility.

With Covenant to Budget and Appropriate

	3 year	5 year	10 year	15 year
Bank Qualified	85.5% of 3 year H-15 Swap Index	85% of 5 year H-15 Swap Index	80% of 10 year H-15 Swap Index	85% of 10 year H-15 Swap Index
Non Bank Qualified	103% of 3 year H-15 Swap Index	102% of 5 year H-15 Swap Index	96% of 10 year H-15 Swap Index	98% of 10 year H-15 Swap Index

Without Covenant to Budget and Appropriate

	3 year	5 year	10 year	15 year
Bank Qualified	87.5% of 3 year H-15 Swap Index	87% of 5 year H-15 Swap Index	82% of 10 year H-15 Swap Index	87% of 10 year H-15 Swap Index
Non Bank Qualified	105% of 3 year H-15 Swap Index	104% of 5 year H-15 Swap Index	98% of 10 year H-15 Swap Index	100% of 10 year H-15 Swap Index

For example, as of March 23, 2007, the H-15 Swap Index indicates a 3 year rate of 4.89%. For a 3 year Bank Qualified Term loan originated today, the rate would be based on 4.89% x .855% for an assigned interest rate of 4.18 for the three year term of the facility. For a 3 year Non-Bank qualified Term loan originated today, the rate would be based on 4.89% X 1.03% for an assigned interest rate of 5.04% for the 3 year term of the facility. The H-15 Federal Reserve Swap Index is available to view on-line at the Federal Reserve Website. We will provide the link to the information at your request.



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Security: The term loans will be payable from and secured by the Assessments levied against property owners with the MSBU's. The County agrees to set the Assessments at levels sufficient to pay the debt service requirements of the Term Loans as well as all costs associated with collection of the assessments.

The Bank has the right to review the location and structure of each MSBU to be financed under the Term Loan Program. Any Term Loans funded under the Term Loan Assessment Program may also be additionally secured by the County's covenant to budget and appropriate in its annual budget (by amendment, if necessary) legally available non-ad valorem revenues in amounts sufficient to make up any deficiencies in the event that the Assessment revenues are insufficient to repay amounts due under the term of the Term Loan. *The Bank reserves the right to make the decision to require the Covenant to Budget and Appropriate for Term Loans.*

Conditions:

1. All matters relating to this Term Loan Assessment Program and Term Loans, including all instruments and documents required, are subject to the Bank's policies and procedures in effect, applicable governmental regulations and/or statutes and approval by the Bank and Bank's Counsel.
2. Bank will require a written opinion from the County's attorney, in form and substance acceptable to Bank and Bank's Counsel, that all documents are valid, binding, and enforceable in accordance with their terms and that the execution and delivery of said documents have been duly authorized. The opinion should also address such other matters as the Bank and Bank's Counsel deems appropriate.
3. The County shall submit annual audited statements within 180 days of year end, together with an annual budget within 30 days of adoption.
4. The Bank shall have the right to adjust the tax-exempt interest rate in order to maintain the same after tax yield if any amendments to existing law are enacted which would adversely affect the Bank's after tax yield, including any "determination of taxability" as will be defined in the loan documentation.
5. The County shall maintain compliance with all federal, state, and local regulations regarding the construction of the proposed improvements.
6. The County and the Bank shall agree on the final documentation content, to include events of default, resolutions from the County, and all other legal documentation relating to the facility, including without limitation, bond counsel's opinion regarding the tax-exempt nature and the "non-bank" qualified nature of the facility.
7. The County will take such actions as may be required by US Treasury



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- regulations in order to maintain the status of the Term Loans as “qualified” tax-exempt obligations according to the Internal Revenue Code.
8. All documents will be prepared by the County’s Bond Counsel, subject to review of such documents by Bank Counsel.

Thank you for the opportunity to submit this proposal for consideration. Please contact the undersigned if you have any questions or concerns.

Very truly yours,

SunTrust Bank

Pamela W. Peters, SVP
Commercial Banking

EXHIBIT B

Form of Loan Agreement

LOAN AGREEMENT

BETWEEN

LEE COUNTY, FLORIDA

AND

SUNTRUST BANK

Dated as of _____, 2007

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This **LOAN AGREEMENT** (the "Agreement") is made and entered into as of _____, 2007, by and between Lee County, Florida, a duly created and validly existing political subdivision of the State of Florida, and its successors and assigns (the "County"), and SunTrust Bank, a Georgia banking corporation, and its successors and assigns (the "Bank");

WITNESSETH:

WHEREAS, the County is authorized by the provisions of Chapter 125, Florida Statutes, and other applicable provisions of law (the "Act") to, among other things, acquire, construct, equip, own, sell, lease, operate and maintain various improvements and public facilities to promote the safety, welfare and economic prosperity of the residents of the County and to borrow money to finance, refinance and reimburse the acquisition, construction, equipping and maintenance of such improvements and public facilities; and

WHEREAS, the County finds it necessary and in the best interests of the County to finance and refinance, from time to time, the costs for the planning, design, development, acquisition, construction, reconstruction, equipping and maintenance of certain improvements and public facilities and all incidental costs relating thereto (collectively, the "Projects"); and

WHEREAS, the County finds that the Projects will serve a public purpose under the Act; and

WHEREAS, the Bank is willing to make available to the County, and the County desires and is willing to accept various loans, pursuant to the terms and provisions of this Agreement in an aggregate principal amount of not exceeding \$10,000,000 under which the County may borrow moneys from time to time to finance, refinance or reimburse the costs of the Projects.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

That the parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, **DO HEREBY AGREE** as follows:

ARTICLE I

DEFINITION OF TERMS

SECTION 1.01. DEFINITIONS. The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings in this Article I specified, unless the context clearly otherwise requires.

"**Act**" shall mean Chapter 125, Florida Statutes, and other applicable provisions of law.

"**Additional Amount**" shall have the meaning ascribed thereto in Section 3.01(d) hereof.

"**Agreement**" shall mean this Loan Agreement, dated as of _____, 2007, by and between the County and the Bank and any and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof.

"**Bank**" shall mean SunTrust Bank, a Georgia banking corporation, and its successors and assigns.

"**Board**" shall mean the Board of County Commissioners of Lee County, Florida.

"**Bond Counsel**" shall mean Nabors, Giblin & Nickerson, P.A., Tampa, Florida or any other attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America.

"**Chair**" shall mean the Chair of the Board of County Commissioners of Lee County, Florida, or his or her authorized designee, including, but not limited to, the Vice Chair of the Board of County Commissioners.

"**Clerk**" shall mean the Clerk of the Circuit Court of Lee County, Florida and Ex-Officio Clerk of the Board of County Commissioners of Lee County, Florida, or his or her authorized designee, including, but not limited to, any duly appointed and acting Deputy Clerk.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended, and applicable rules and regulations.

"**County**" shall mean Lee County, Florida, a political subdivision of the State of Florida.

"County Manager" shall mean the County Manager of Lee County, Florida, or his or her authorized designee, including, but not limited to, any duly appointed and acting Assistant County Manager.

"County Moneys" shall mean the moneys, if any, budgeted and appropriated by the County pursuant to Section 2.06 hereof in amounts sufficient to pay any debt service on a Note to the extent that the Pledged Revenues are insufficient therefor.

"Date of Issuance" shall mean, in the case of each Note, the date set forth in the resolution authorizing the issuance of such Note and in said Note as the date on which the Note is issued. The Date of Issuance shall be determined pursuant to Section 3.01(b) hereof.

"Default Rate" shall mean an interest rate equal to the lesser of 10% per annum or the maximum rate permitted by state law.

"Designated Revenues" shall mean, with respect to each Note, (a) the Pledged Revenues which shall secure each Note issued to finance a particular Project, (b) any County Moneys, if so designated pursuant to the resolution authorizing the issuance of a particular Note in accordance with Section 2.06 hereof, and (c) the proceeds of each Note pending the application thereof.

"Determination of Taxability" shall mean the circumstance of interest paid or payable on a Note becoming includable for federal income tax purposes in the gross income of the Noteholder as a consequence of any act, omission or event whatsoever, including, but not limited to, the matters described in the immediately succeeding sentence, and regardless of whether the same was within or beyond the control of the County. A Determination of Taxability will be deemed to have occurred upon (a) the receipt by the County or the Noteholder of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency which holds that any interest payable on a Note is includable in the gross income of such Noteholder; (b) the issuance of any public or private ruling of the Internal Revenue Service that any interest payable on such Note is includable in the gross income of the Noteholder; or (c) receipt by the County or the Noteholder of an opinion of Bond Counsel that any interest on the Note has become includable in the gross income of the Noteholder for federal income tax purposes. For all purposes of this definition, a Determination of Taxability will be deemed to occur on the date as of which the interest on a Note is deemed includable in the gross income of the Noteholder. A Determination of Taxability shall not occur based solely upon the fact that such interest is taken into account in determining adjusted current earnings for the purpose of the alternative minimum income tax imposed on corporations.

"Final Maturity Date" shall mean, in the case of each Note, the date set forth in the resolution authorizing the issuance of such Note and in said Note as the date on which the final payment of principal of and interest on said Note is due and payable.

"15-Year Loan Term" shall be the Loan Term for any Loan (i) the Final Maturity Date of which is (a) more than 14 years and six months after the Date of Issuance of such Loan and (b) less than 15 years and six months after the Date of Issuance of such Loan, and (ii) the amortization of which is calculated over 15 years.

"5-Year H-15 Swap Index" shall mean the rate designated as the 5-year interest rate swap rate under the H.15 Selected Interest Rates published by the Federal Reserve on the 3rd business day prior to the Date of Issuance of the particular Note or Notes.

"5-Year Loan Term" shall be the Loan Term for any Loan the Final Maturity Date of which is (i) more than four years and six months after the Date of Issuance of such Loan and (ii) less than five years and six months after the Date of Issuance of such Loan.

"Interest Rate" shall mean for any Note issued hereunder, the Qualified Rate or the Non-Qualified Rate as determined at the time of the borrowing and set forth in the resolution authorizing the issuance of such Note.

"Loan" or **"Loans"** shall mean a borrowing of money under this Agreement in accordance with Articles III and IV hereof.

"Loan Term" shall mean the term of each Loan made hereunder, which Loan Term shall be either a 3-Year Loan Term, a 5-Year Loan Term, a 10-Year Loan Term, a 15-Year Loan Term, a 20-Year Loan Term or such other term as is agreed to between the Bank and the County prior to the issuance of the Note having such other loan term.

"Maximum Corporate Tax Rate" shall mean the highest marginal United States federal income tax rate applicable to the taxable income of corporations without regard to any increase in tax designed to normalize the rate for all income at the highest marginal tax rate, which as of the date hereof is 35%.

"Non-Ad Valorem Revenues" shall mean all legally available revenues of the County derived from any source whatsoever other than ad valorem taxation on real and personal property, which are legally available to make the payments required herein, but only after provision has been made by the County for the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the County or which are legally mandated by applicable law.

"Non-Qualified Rate" shall mean:

(1) with respect to a Note pursuant to which the County Moneys are designated as a repayment source in accordance with Section 2.06 hereof,

(a) In the case of a Note with a 3-Year Loan Term, a fixed interest rate that is equal to 103% of the 3-Year H-15 Swap Index.

(b) In the case of a Note with a 5-Year Loan Term, a fixed interest rate that is equal to 102% of the 5-Year H-15 Swap Index.

(c) In the case of a Note with a 10-Year Loan Term, a fixed interest rate that is equal to 96% of the 10-Year H-15 Swap Index;

(d) In the case of a Note with a 15-Year Loan Term, a fixed interest rate that is equal to 98% of the 10-Year H-15 Swap Index;

(e) In the case of a Note with a 20-Year Loan Term, a fixed interest rate that is equal to 98% of the 10-Year H-15 Swap Index; and

(f) In the case of a Note with a loan term other than a 3-Year Loan Term, a 5-Year Loan Term, a 10-Year Loan Term, a 15-Year Loan Term or a 20-Year Loan Term, a fixed interest rate to be determined by the Bank and the County prior to the issuance of such Note, as set forth in the actual Note.

(2) with respect to a Note pursuant to which the County Moneys are not designated as a repayment source in accordance with Section 2.06 hereof,

(a) In the case of a Note with a 3-Year Loan Term, a fixed interest rate that is equal to 105% of the 3-Year H-15 Swap Index.

(b) In the case of a Note with a 5-Year Loan Term, a fixed interest rate that is equal to 104% of the 5-Year H-15 Swap Index.

(c) In the case of a Note with a 10-Year Loan Term, a fixed interest rate that is equal to 98% of the 10-Year H-15 Swap Index;

(d) In the case of a Note with a 15-Year Loan Term, a fixed interest rate that is equal to 100% of the 10-Year H-15 Swap Index;

(e) In the case of a Note with a 20-Year Loan Term, a fixed interest rate that is equal to 100% of the 10-Year H-15 Swap Index; and

(f) In the case of a Note with a loan term other than a 3-Year Loan Term, a 5-Year Loan Term, a 10-Year Loan Term, a 15-Year Loan Term or a 20-

Year Loan Term, a fixed interest rate to be determined by the Bank and the County prior to the issuance of such Note, as set forth in the actual Note.

"Note" or **"Notes"** shall mean one or more Notes authorized by Resolution and delivered by the County to the Bank in connection with a Loan, in accordance with the requirements set forth in Articles III and IV hereof.

"Noteholder" shall mean the Bank, or any other registered holder of or participant in any Note.

"Pledged Revenues" shall mean the proceeds of certain special assessments lawfully levied and collected against real properties specially benefited by the acquisition, construction and equipping by the County of the particular Project being financed or refinanced with proceeds of a Loan, including the interest and penalties on such special assessments. Pledged Revenues shall include moneys lawfully received by the County on account of collection of delinquent special assessments and any special assessment prepayments. Pledged Revenues shall also include proceeds of any reassessment pursuant to Section 2.07 hereof.

"Project" or **"Projects"** shall refer to the planning, design, development, acquisition, construction, equipping and maintenance of certain improvements and public facilities in various municipal service benefit units within the County including the costs associated therewith financed or refinanced from the proceeds of the Loans. The Project to be financed or refinanced by each Loan shall be described in the Resolution of the County authorizing such Loan, as the same may be amended from time to time by the Board.

"Qualified Rate" shall mean:

(1) with respect to a Note pursuant to which the County Moneys are designated as a repayment source in accordance with Section 2.06 hereof,

(a) In the case of a Note with a 3-Year Loan Term, a fixed interest rate that is equal to 85.5% of the 3-Year H-15 Swap Index.

(b) In the case of a Note with a 5-Year Loan Term, a fixed interest rate that is equal to 85% of the 5-Year H-15 Swap Index.

(c) In the case of a Note with a 10-Year Loan Term, a fixed interest rate that is equal to 80% of the 10-Year H-15 Swap Index;

(d) In the case of a Note with a 15-Year Loan Term, a fixed interest rate that is equal to 85% of the 10-Year H-15 Swap Index;

(e) In the case of a Note with a 20-Year Loan Term, a fixed interest rate that is equal to 85% of the 10-Year H-15 Swap Index; and

(f) In the case of a Note with a loan term other than a 3-Year Loan Term, a 5-Year Loan Term, a 10-Year Loan Term, a 15-Year Loan Term or a 20-Year Loan Term, a fixed interest rate to be determined by the Bank and the County prior to the issuance of such Note, as set forth in the actual Note.

(2) with respect to a Note pursuant to which the County Moneys are not designated as a repayment source in accordance with Section 2.06 hereof,

(a) In the case of a Note with a 3-Year Loan Term, a fixed interest rate that is equal to 87.5% of the 3-Year H-15 Swap Index.

(b) In the case of a Note with a 5-Year Loan Term, a fixed interest rate that is equal to 87% of the 5-Year H-15 Swap Index.

(c) In the case of a Note with a 10-Year Loan Term, a fixed interest rate that is equal to 82% of the 10-Year H-15 Swap Index;

(d) In the case of a Note with a 15-Year Loan Term, a fixed interest rate that is equal to 87% of the 10-Year H-15 Swap Index;

(e) In the case of a Note with a 20-Year Loan Term, a fixed interest rate that is equal to 87% of the 10-Year H-15 Swap Index; and

(f) In the case of a Note with a loan term other than a 3-Year Loan Term, a 5-Year Loan Term, a 10-Year Loan Term, a 15-Year Loan Term or a 20-Year Loan Term, a fixed interest rate to be determined by the Bank and the County prior to the issuance of such Note, as set forth in the actual Note.

"Resolution" shall mean the resolution adopted by the County on May 29, 2007, which among other things authorized the execution and delivery of this Agreement.

"State" shall mean the State of Florida.

"Tax Certificate" shall have the meaning ascribed thereto in Section 2.03 hereof.

"Taxable Period" shall have the meaning ascribed thereto in Section 3.01(d) hereof.

"Taxable Rate" shall mean with respect to a Note, an interest rate per annum calculated by the Noteholder after the occurrence of a Determination of Taxability which interest rate shall provide the Noteholder with a rate of return with respect to such Note equal to the rate of return received by the Noteholder prior to the Determination of Taxability.

"3-Year H-15 Swap Index" shall mean the rate designated as the 3-year interest rate swap rate under the H.15 Selected Interest Rates published by the Federal Reserve on the 3rd business day prior to the Date of Issuance of the particular Note or Notes.

"3-Year Loan Term" shall be the Loan Term for any Loan the Final Maturity Date of which is (i) more than two years and six months after the Date of Issuance of such Loan and (ii) less than three years and six months after the Date of Issuance of such Loan.

"10-Year H-15 Swap Index" shall mean the rate designated as the 10-year interest rate swap rate under the H.15 Selected Interest Rates published by the Federal Reserve on the 3rd business day prior to the Date of Issuance of the particular Note or Notes.

"10-Year Loan Term" shall be the Loan Term for any Loan the Final Maturity Date of which is (i) more than nine years and six months after the Date of Issuance of such Loan and (ii) less than 10 years and six months after the Date of Issuance of such Loan.

"20-Year Loan Term" shall be the Loan Term for any Loan (i) the Final Maturity Date of which is (a) more than 14 years and six months after the Date of Issuance of such Loan and (b) less than 15 years and six months after the Date of Issuance of such Loan, and (ii) the amortization of which is calculated over 20 years.

SECTION 1.02. INTERPRETATION. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. Any capitalized terms used in this Agreement not herein defined shall have the meaning ascribed to such terms in the Resolution. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

SECTION 1.03. TITLES AND HEADINGS. The titles and headings of the articles and sections of this Agreement, which have been inserted for convenience of reference only and are not to be considered a part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

ARTICLE II

REPRESENTATIONS AND COVENANTS; SECURITY FOR NOTES

SECTION 2.01. REPRESENTATIONS AND COVENANTS OF THE COUNTY. The County represents and covenants that:

(a) The County is a political subdivision of the State duly created and validly existing under the laws of the State, including the Act. The County (i) has pursuant to the Resolution, duly authorized the execution and delivery of this Agreement, and the performance by the County of all of its obligations hereunder, and (ii) shall, pursuant to subsequent resolutions, duly authorize all Notes issued hereunder and the Projects financed thereby and the performance by the County of all its obligations relating thereto.

(b) The County has complied with all of the provisions of the constitution and laws of the State, including the Act, and has full power and authority to enter into and consummate all transactions contemplated by this Agreement, and to perform all of its obligations hereunder and, to the best knowledge of the County, the transactions contemplated hereby do not conflict with the terms of any statute, order, rule, regulation, judgment, decree, agreement, instrument or commitment to which the County is a party or by which the County is bound.

(c) The County is duly authorized and entitled to issue the Notes and this Agreement and, when issued in accordance with the terms of this Agreement, the Notes will each constitute legal, valid and binding obligations of the County enforceable in accordance with their respective terms, subject as to enforceability to bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(d) There are no actions, suits or proceedings pending or, to the best knowledge of the County, threatened against or affecting the County, at law or in equity, before or by any governmental authority, that, if adversely determined, would materially impair the ability of the County to perform the County's obligations under this Agreement or under the Notes.

(e) The County will furnish to the Bank within 210 days after the close of each fiscal year of the County, or as soon as practicable, annual audited financial statements of the County certified by an independent certified public accountant.

(f) The County will furnish to the Bank within 30 days after its adoption in each fiscal year of the County a copy of the County's annual budget.

SECTION 2.02. GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE BANK. The Bank hereby represents, warrants and agrees that it is a Georgia banking corporation authorized to execute and deliver this Agreement and to perform its obligations hereunder, and such execution and delivery will not constitute a violation of its charter, articles of association or bylaws. Pursuant to the terms and provisions of this Agreement, the Bank agrees to loan amounts not exceeding \$10,000,000 in the aggregate principal amount to the County for the purpose of financing or refinancing the costs of one or more Projects.

SECTION 2.03. TAX COVENANT. (a) In order to maintain the exclusion from gross income for purposes of Federal income taxation of interest on the Notes, the County shall comply with each requirement of the Code applicable to the Notes. In furtherance of the covenant contained in the preceding sentence, the County agrees to continually comply with the provisions of each Certificate as to Arbitrage and Other Tax Matters to be executed by the County relating to the Notes, as such Certificate or Certificates may be amended from time to time, as a source of guidance for achieving compliance with the Code (each individually referred to herein as the "Tax Certificate").

(b) The County shall make any and all payments required to be made to the United States Department of the Treasury in connection with the Notes pursuant to Section 148(f) of the Code.

(c) So long as necessary in order to maintain the exclusion from gross income of interest on the Notes for Federal income tax purposes, the covenants contained in this Section shall survive the payments of the Notes and the interest thereon, including any payment or defeasance thereof.

(d) The County shall not take or permit any action or fail to take any action which would cause the Notes to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.

SECTION 2.04. NOTES NOT TO BE INDEBTEDNESS OF THE COUNTY OR STATE. The Notes, when delivered by the County pursuant to the terms of this Agreement, shall not be obligations of the County, the State or any political subdivision or agency thereof, within the meaning of any constitutional, statutory or charter limitations of indebtedness, but shall be payable solely as herein provided. No Noteholder shall ever have the right to compel the exercise of the ad valorem taxing power of the County, or taxation in any form on any property therein to pay the Notes or the interest thereon. The Notes are special and limited obligations payable as to principal and interest from the Designated Revenues.

SECTION 2.05. SECURITY FOR NOTES. The Notes shall be secured by the Designated Revenues. The Pledged Revenues with respect to each Note shall be described in the resolution authorizing such Note and shall be pledged to and shall secure

each such Note and the Noteholder shall have a lien on such Pledged Revenues upon the issuance of said Note. The County does hereby pledge the Designated Revenues to the payment of the principal of and interest on the Notes in accordance with the provisions hereof. The pledge of and lien on such Designated Revenues shall attach with respect to each Note at the time it is issued. The County agrees to collect the Pledged Revenues in the maximum amount permitted by law.

SECTION 2.06. COVENANT TO BUDGET AND APPROPRIATE. With respect to any Loan proposed to be made hereunder, the Bank shall have the right to cause the foregoing covenant contained in this Section 2.06 to apply with respect to such Loan. In the event the Bank determines to cause the foregoing covenant to apply to any particular Loan, a covenant substantially similar to the foregoing shall be set forth in the resolution authorizing the issuance of the Note evidencing such Loan.

(a) Until the particular Note is paid or deemed paid pursuant to the provisions of this Agreement, the County shall covenant to appropriate in its annual budget, by amendment if necessary, from Non-Ad Valorem Revenues lawfully available in each fiscal year of the County in which principal or interest on the particular Note becomes due and payable, amounts sufficient, together with other available moneys, to pay the principal of and interest on the Note, as the same become due (whether by prepayment, at maturity or otherwise). Such covenant and agreement on the part of the County to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments hereunder and under the Note shall have been budgeted, appropriated and actually paid. Once such Non-Ad Valorem Revenues are so budgeted, the same shall constitute "County Moneys" hereunder. Notwithstanding the foregoing covenant of the County, the County does not covenant to maintain any services or programs, now provided or maintained by the County, which generate Non-Ad Valorem Revenues.

(b) Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the County from pledging in the future its Non-Ad Valorem Revenues, nor does it require the County to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Noteholders a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the County. Such covenant to appropriate Non-Ad Valorem Revenues is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues hereinafter entered into (including the payment of debt service on bonds and other debt instruments). The covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated herein shall have the effect of making available for the payment of the principal of and interest on the Notes in the manner described herein Non-Ad Valorem Revenues and placing on the County a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the restrictions of

Section 129.07, Florida Statutes, which provides, in part, that it is unlawful for the Board to expend or contract for the expenditure in any fiscal year more than the amount budgeted in each fund's budget and in no case shall the total appropriations of any budget be exceeded, except as provided pursuant to Section 129.06, Florida Statutes; and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the County or which are legally mandated by applicable law.

SECTION 2.07. RE-ASSESSMENTS. If any Pledged Revenues shall be either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the County shall be satisfied that any such Pledged Revenues are so irregular or defective that the same cannot be enforced or collected, or if the County shall have omitted to make such Pledged Revenues when it might have done so, the County shall either (a) take all necessary steps to cause a new source of Pledged Revenues to be made for the whole or any part of said improvement or against any real property benefited by said improvement, or (b) in its sole discretion, make up the amount of such Pledged Revenues from legally available moneys.

SECTION 2.08. PAYMENT COVENANT. The County covenants that it shall duly and punctually pay from Designated Revenues the principal of and interest on the Notes at the dates, place and in the manner provided herein and in the Notes according to the true intent and meaning thereof and all other amounts due under this Agreement.

SECTION 2.09. COMPLETION OF PROJECTS. The County shall maintain compliance with all material federal, state and local regulations applicable to the acquisition, construction and equipping of the Projects.

ARTICLE III

DESCRIPTION OF NOTES; PAYMENT TERMS; OPTIONAL PREPAYMENT

SECTION 3.01. DESCRIPTION OF THE NOTES. (a) In connection with any Loan incurred by the County pursuant to this Agreement, the County shall, pursuant to authority granted under the Resolution and this Agreement, issue and deliver a Note to the Bank in minimum principal amounts of \$50,000 to evidence such Loan, which Note, together with any other Notes issued pursuant to this Agreement, shall not exceed TEN MILLION AND 00/100 DOLLARS (\$10,000,000) in aggregate principal amount. Each Note shall be designated as "Lee County, Florida Revenue Note, Series _____" with a further designation identifying the MSBU Project relating to the Loan. The County shall establish a separate series for each Project it finances, refinances or reimburses pursuant to the terms hereunder. The County shall identify each Note in such manner as it deems appropriate. The text of the Notes shall be substantially in the form attached hereto as Exhibit A, with such omissions, insertions and variations as may be necessary and desirable to reflect the terms of each Note. The provisions of the form of the Note are hereby incorporated in this Agreement. No Note shall be issued hereunder until the conditions set forth in Article IV hereof shall have been satisfied.

(b) Each Note shall be dated the date of its delivery (the "Date of Issuance") and bear interest from such date at the applicable Interest Rate as set forth below, as the same may be adjusted pursuant to Section 3.02 hereof. The Notes shall be executed in the name of the County by the manual signature of the Chair of the Board and the official seal of the County shall be affixed thereto and attested by the manual signature of the Clerk. In case any one or more of the officers, who shall have signed or sealed any of the Notes, shall cease to be such officer of the County before the Notes so signed and sealed shall have been actually delivered, such Notes may nevertheless be delivered as herein provided and may be issued as if the person who signed or sealed such Notes had not ceased to hold such office. Any Note may be signed and sealed on behalf of the County by such person who at the actual time of the execution of such Note shall hold the proper office, although at the date the Notes shall actually be delivered, such person may not have held such office.

(c) Subject to the adjustments set forth in Sections 3.01(d) and 3.02 hereof, the Notes shall bear interest at either the Qualified Rate or the Non-Qualified Rate in accordance with the notice given by the County to the Bank pursuant to Section 4.01 hereof. The initial rate of interest on each Note shall be determined as of the third (3rd) business day prior to the date of issuance of such Note. Interest on each Note, shall be payable semi-annually on May 1 and November 1 of each year commencing on the May 1 or November 1 that immediately succeeds the Date of Issuance of the Note by at least 30 days. Principal of a Note shall be payable on May 1 or November 1, as determined by the County and approved by the Bank, of each year in such amounts as

shall be agreed to by the County and the Bank. Interest on a Note shall be calculated on the basis of 360-day year, consisting of twelve 30-day months.

(d) In the event of a Determination of Taxability, the interest rate on any Note subject to such Determination of Taxability shall be changed to the Taxable Rate effective retroactively to the date on which such Determination of Taxability was made. Immediately upon a Determination of Taxability, the County agrees to pay to any Noteholder subject to such Determination of Taxability the Additional Amount (as defined herein). "Additional Amount" means (i) the difference between (A) interest on such Note for the period commencing on the date on which the interest on such Note (or portion thereof) loses its tax-exempt status and ending on the earlier of the date such Note ceased to be outstanding or the date the Note regains its tax-exempt status (the "Taxable Period") at a rate per annum equal to the Taxable Rate as adjusted from time to time on the same dates and in the same manner as the interest rate on such Note was or would be adjusted pursuant to the provisions of such Note, and (B) the aggregate amount of interest payable on such Note for the Taxable Period under the provisions of such Note, plus (ii) any penalties and interest paid or payable by such Noteholder to the Internal Revenue Service by reason of such Determination of Taxability.

(e) All payments of principal of and interest on the Notes shall be payable in any coin or currency of the United States, which at the time of payment, is legal tender for the payment of public and private debts and shall be made to the bank (i) in immediately available funds, or (ii) in such other manner as the County and the Bank shall agree upon in writing.

(f) There will be no Bank fees to maintain the line of credit and no draw fees thereunder. The Bank shall pay for all of its costs relating to servicing the line of credit.

SECTION 3.02. ADJUSTMENTS TO INTEREST RATES AS A RESULT OF TAX LAW CHANGES. The Interest Rate shall be subject to adjustment as described in this Section from the date of its issuance. The Bank shall promptly notify the County in writing of any adjustments to the Interest Rate pursuant to this Section. ANY ADJUSTMENTS UNDER THIS SECTION 3.02 MAY BE MADE ONLY AFTER THE NOTEHOLDER HAS PROVIDED THE COUNTY 30 DAYS WRITTEN NOTICE OF SUCH ADJUSTMENTS. If the tax laws or regulations are amended to decrease the Maximum Corporate Tax Rate, to cause the interest on any Notes to become taxable or be subject to a minimum tax or an alternative minimum tax to the extent not otherwise taxable or subject on the Date of Issuance thereof, or to otherwise decrease the yield on any Notes to the Noteholder (directly or indirectly, other than because of a Determination of Taxability) then the Interest Rate on any Notes so affected shall be adjusted to cause the yield on such Notes, to equal what the yield on the Notes would have been in the absence of such change or amendment in the tax laws or regulations. If the tax laws or regulations are amended to increase the effective after-tax yield on the Notes to the Noteholder (including by way of an increase in the Maximum Corporate Tax Rate) then

the Interest Rate on the Note will be increased or decreased to cause the effective after-tax yield on the Note to equal what the yield would have been in the absence of such change or amendment in the tax laws or regulations. As set forth in Section 3.01 hereof, upon a Determination of Taxability, the Interest Rate applicable to any such Notes shall be the Taxable Rate.

To the extent an adjustment to the Interest Rate on any Notes under this Section 3.02 is not affected within three (3) months of the event giving rise to the adjustment, the additional interest due as a result of such adjustment shall be paid with interest thereon compounded monthly at the rate which is equal to the interest rate on such Notes; provided, however, in no event shall such interest rate exceed the maximum rate permitted by law. Subject to the provisions of this Section 3.02 hereof, all unpaid amounts determined to be owing as a result of such calculation shall be due and payable within thirty (30) days after delivery of written notice of the amount of such adjustment, and shall be paid to the Noteholder of record during the period to which the adjustment relates. This obligation shall survive the payment and cancellation of any Notes.

SECTION 3.03. OPTIONAL PREPAYMENT. The County may prepay and redeem any Note or all Notes, in whole or in part, at any time or from time to time, without penalty or premium, by paying to the Noteholder all or part of the principal amount of the Note or Notes to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment. Each prepayment and redemption of such Notes shall be made on such date and in such principal amount as shall be specified by the County in a written notice delivered to the Noteholder not less than five (5) days prior thereto specifying the principal amount of the Note or Notes to be prepaid and the date of such prepayment. Prepayments shall be applied against the County's principal repayment requirements as determined by the County in its sole discretion as set forth in each Note. Notice having been given as aforesaid, the principal amount of the Note stated in such notice or the whole thereof, as the case may be, shall become due and payable on the prepayment date stated in such notice, together with interest accrued and unpaid to the prepayment date on the principal amount then being paid; and the amount of principal and interest then due and payable shall be paid upon presentation of such Note at the office of the Noteholder for notation thereon of the amount of the Notes so then paid. If on the prepayment date moneys for the payment of the Note(s) or portion thereof to be prepaid, together with interest to the prepayment date on such amount, shall have been paid to the Noteholder as above provided and if notice of prepayment shall have been given to the Noteholder as above provided, then from and after the prepayment date interest on such Note(s) or portion thereof shall cease to accrue. If said moneys shall not have been so paid on the prepayment date, such principal amount of such Note or portion thereof shall continue to bear interest until payment thereof at the rate or rates provided for in this Agreement.

ARTICLE IV

CONDITIONS FOR NOTES

SECTION 4.01. CONDITIONS FOR ISSUANCE OF NOTES. (a) In connection with the issuance of any Note, the Bank shall not be obligated to make any Loan under this Agreement unless at or prior to the date specified for the making thereof, issuance thereof the County delivers to the Bank:

(i) Notice of the County's intention to issue a Note at least ten (10) days prior to the date specified for such Loan. Such notice shall state (A) the principal amount of the proposed Note, (B) whether the Note shall be a "qualified tax-exempt obligation" under Section 265(b)(3)(B) of the Code necessitating the application of the Qualified Rate or whether the Note shall not be a "qualified tax-exempt obligation" under Section 265(b)(3)(B) of the Code necessitating the application of the Non-Qualified Rate, (C) the Project to be financed by the Loan, (D) the particular Loan Term for the Loan, and (E) the principal payment dates and the Final Maturity Date of the Note securing such Loan;

(ii) A certificate of the Chair or County Manager, dated as of the date of such Loan, to the effect that the representations and warranties of the County contained in Section 2.01 hereof are true and correct as of such date;

(iii) A certificate of the Chair or County Manager, dated as of the date of such Loan, stating that there is currently no Event of Default or event that with notice or lapse of time or both would become an Event of Default hereunder;

(iv) A fully executed Tax Certificate relating to the Project which will be financed by the Note to be issued;

(v) A resolution of the County authorizing issuance of the Note, setting forth the Project, principal amount, principal repayment terms, whether the Note will bear interest at the Qualified Rate or the Non-Qualified Rate and whether a covenant to budget and appropriate pursuant to Section 2.06 shall apply.

(vi) A copy of a completed and executed Form 8038-G relating to the Note evidencing such Loan to be filed with the Internal Revenue Service;

(vii) An opinion of Bond Counsel in form and substance to the effect that (A) the Agreement and the Note have been duly authorized by the County and are enforceable obligations in accordance with their terms and the Resolution relating to such Note has been duly adopted and is enforceable in accordance with its terms (enforceability of such instruments may be subject to standard bankruptcy exceptions and the like), (B) interest on the Note shall be excluded from gross income of the holder thereof for federal income tax purposes and will not be

treated as a preference item for purposes of computing the alternative minimum tax imposed by the Code, and (C) the interest on such Note shall be exempt from Florida intangible personal property taxes and documentary stamp taxes;

(viii) A fully executed Note, dated the date of the Loan, in the principal amount of such loan; and

(ix) Such additional certificates, instruments and other documents as the Bank, or its Counsel or Bond Counsel, or Counsel to the County, may deem necessary or appropriate.

(b) Upon satisfaction of the conditions set forth in paragraph (a) above, the County may borrow up to an aggregate principal amount of \$10,000,000 from the Bank pursuant to one or more Loans. During such time as \$10,000,000 of Loans shall have been issued pursuant to the terms and provisions of this Agreement, the Bank shall not be required to honor any further Loan requests; provided, however, that if the Bank and the County agree in writing to increase the amount available to be loaned to the County by the Bank pursuant to this Agreement, such \$10,000,000 limitation shall be increased to such agreed upon amount. The date the last Loan can be made under this Agreement shall be June 30, 2010, unless otherwise extended pursuant to Section 6.01 of this Agreement. The County shall apply the proceeds of each Loan to pay for, refinance or reimburse itself for prior expenditures incurred for, the costs of the particular Project for which each Loan is made. The costs of the Projects may include, but are not limited to:

(i) The costs of architectural and engineering services related to the Projects, including, without limitation, the costs of preparation of studies, surveys, reports, tests, plans and specifications;

(ii) The costs of legal, accounting, marketing and other special services related to the Projects;

(iii) Costs and fees incurred in connection with the issuance of any Notes;

(iv) Fees and charges incurred in connection with applications to federal, state and local governmental agencies for any requisite approval or permits regarding the acquisition and construction of the Projects;

(v) Costs incurred in connection with the acquisition of the sites for the Projects, including any necessary rights-of-way, easements or other interests in real or personal property;

(vi) Costs incurred in connection with the acquisition, construction, improvement or extension of the buildings, structures and facilities comprising the Projects;

(vii) Costs incurred in connection with the acquisition and installation of any machines, equipment, fixtures, appurtenances or personal property of any kind or nature, which are to comprise a part of the Projects;

(viii) Interest on Notes accruing prior to the completion date of the Projects; and

(ix) To the extent permitted by law, other costs and expenses relating to the Projects which are incurred for the purpose of providing for the Projects, including the administrative and maintenance costs associated with the management of the Projects, and other facilities functionally related and subordinate thereto.

ARTICLE V

EVENTS OF DEFAULT; REMEDIES

SECTION 5.01. EVENTS OF DEFAULT. An "Event of Default" shall be deemed to have occurred under this Agreement if:

(a) The County shall fail to make timely payment of principal or interest then due on any Note;

(b) Any representation or warranty of the County contained in Article II of this Agreement or any certificate provided the Bank under Article IV shall prove to be untrue in any material respect; or

(c) Failure by the County to observe and perform any covenant, condition or agreement on its part to be observed or performed by it under this Agreement or the Resolution other than as referred to in clause (a) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the County, unless the Bank shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, then such time will automatically be extended if corrective action is instituted by the County within the applicable period and diligently pursued until the default is corrected.

SECTION 5.02. REMEDIES. If any such Event of Default shall have occurred, the Bank may seek enforcement of all remedies available to it under law. The Bank may declare all Notes to be immediately due and payable. Any amounts due on a Note which shall remain unpaid on the tenth (10th) day following the scheduled payment dates shall bear interest at the Default Rate until all amounts then due under such Note are paid in full. Occurrence of an Event of Default or notice of any event described in Section 5.01 above shall suspend the obligation of the Bank to honor additional Notes until such time as such Event of Default or item giving rise to the notice under paragraph (c) above has been cured to the satisfaction of the Bank. Nothing herein shall be deemed or construed to require the Bank to permit any cure or otherwise waive its rights hereunder to strict compliance by the County with its obligations hereunder, time being of the essence as to all such obligations. The Bank shall be entitled to its reasonable costs and expenses (including reasonable fees and expenses of counsel) incurred in enforcing any of its rights under this Agreement after an Event of Default.

ARTICLE VI

MISCELLANEOUS

SECTION 6.01. AMENDMENTS, CHANGES OR MODIFICATIONS TO THE AGREEMENT. This Agreement shall not be amended, changed or modified without the prior written consent of the Bank and the County.

SECTION 6.02. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

SECTION 6.03. SEVERABILITY. If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the invalidity of such provisions or sections shall not affect any other provisions or sections hereof, and this Agreement shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced, as if such illegal or invalid clause, provision or section had not been contained herein.

SECTION 6.04. TERM OF AGREEMENT. This Agreement shall be in full force and effect from the date the first Note is issued pursuant to Section 4.01 hereof and shall continue in effect as long as any Note is outstanding; provided, however, no Note may be issued following June 30, 2010.

SECTION 6.05. NOTICE OF CHANGES IN FACT. Promptly after the County becomes aware of the same, the County will notify the Bank of (a) any change in any material fact or circumstance represented or warranted by the County in this Agreement or in connection with the issuance of the Notes, and (b) any default or event which, with notice or lapse of time or both, could become a default under the Agreement, specifying in each case the nature thereof and what action the County has taken, is taking and/or proposed to take with respect thereto.

SECTION 6.06. NOTICES. Any notices or other communications required or permitted hereunder shall be sufficiently given when (a) delivered by personal or overnight courier or (b) mailed by registered or certified mail, return receipt requested, postage prepaid, to Lee County, Florida, 2115 Second Street, Fort Myers, Florida 33901, Attention: County Manager, and to SunTrust Bank, 12751 New Brittany Boulevard, Fort Myers, Florida 33907, Attention: Commercial Banking. The County and the Bank may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent.

SECTION 6.07. APPLICABLE LAW. The substantive laws of the State of Florida shall govern this Agreement.

SECTION 6.08. INCORPORATION BY REFERENCE. All of the terms and obligations of the Resolution are hereby incorporated herein by reference as if said Resolution was fully set forth in this Agreement.

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

(SEAL)

By: _____
Chair

ATTEST:

Finance Director/Deputy Clerk

SUNTRUST BANK

By: _____
First Vice President

EXHIBIT A

**UNITED STATES OF AMERICA
STATE OF FLORIDA
LEE COUNTY, FLORIDA
REVENUE NOTE, SERIES _____**

<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Date of Issuance</u>	<u>Final Maturity Date</u>
\$ _____	_____ %	_____, ____	_____, ____

KNOW ALL MEN BY THESE PRESENTS, that LEE COUNTY, FLORIDA (the "County"), for value received, hereby promises to pay, solely from the Designated Revenues described in the within mentioned Agreement, to the order of SUNTRUST BANK, or its successors or assigns (the "Noteholder"), the principal sum of _____ AND 00/100 DOLLARS (\$_____) (the "Principal Amount") advanced pursuant to that certain Loan Agreement by and between SunTrust Bank and the County, dated as of _____, 2007 (the "Agreement"), and to pay interest on such outstanding Principal Amount from the Date of Issuance thereof, or from the most recent date to which interest has been paid at the Interest Rate per annum identified above (subject to adjustment as hereinafter provided) in arrears semi-annually on May 1 and November 1 of each year, commencing _____ 1 until such Principal Amount shall have been paid. The Principal Amount hereof shall be payable [as described below] or [upon the Final Maturity Date] or earlier prepayment upon presentation hereof. Such Principal Amount and interest is payable in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts.

This Note, in the aggregate principal amount of \$_____, is issued under the authority of and in full compliance with the Constitution and statutes of the State of Florida, including, particularly, Chapter 125, Florida Statutes, and other applicable provisions of law, resolutions duly adopted by the County on May 29, 2007 and _____, _____ (collectively, the "Resolution"), as such Resolution may be amended and supplemented from time to time, and is subject to all terms and conditions of the Resolution and the Agreement. Any term used in this Note and not otherwise defined shall have the meaning ascribed to such term in the Agreement.

[Insert Principal amortization]

This Note is being issued to finance or refinance the costs of acquiring and constructing _____. This Note is secured by and shall be payable from the Designated Revenues as described in the Agreement. The Bank shall have a pledge of and lien on _____, which shall be part of the Designated Revenues.

This Note shall bear interest at the Interest Rate identified above on the basis of a 360-day year, consisting of twelve 30-day months. Such Interest Rate is subject to adjustment as provided in Section 3.01(d) and Section 3.02 of the Agreement. The Noteholder shall provide to the County upon request such documentation to evidence the amount of interest due on the Note.

[Until the particular Note is paid or deemed paid pursuant to the provisions of the Loan Agreement, the County shall covenant to appropriate in its annual budget, by amendment if necessary, from Non-Ad Valorem Revenues lawfully available in each fiscal year of the County in which principal or interest on the particular Note becomes due and payable, amounts sufficient, together with other available moneys, to pay the principal of and interest on the Note, as the same become due (whether by prepayment, at maturity or otherwise). Such covenant and agreement on the part of the County to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments hereunder shall have been budgeted, appropriated and actually paid. Once such Non-Ad Valorem Revenues are so budgeted, the same shall constitute "County Moneys" hereunder. Notwithstanding the foregoing covenant of the County, the County does not covenant to maintain any services or programs, now provided or maintained by the County, which generate Non-Ad Valorem Revenues.]

[Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the County from pledging in the future its Non-Ad Valorem Revenues, nor does it require the County to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Noteholders a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the County. Such covenant to appropriate Non-Ad Valorem Revenues is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues hereinafter entered into (including the payment of debt service on bonds and other debt instruments). The covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated herein shall have the effect of making available for the payment of the principal of and interest on the Notes in the manner described herein Non-Ad Valorem Revenues and placing on the County a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its

obligations hereunder; subject, however, in all respects to the restrictions of Section 129.07, Florida Statutes, which provides, in part, that it is unlawful for the Board to expend or contract for the expenditure in any fiscal year more than the amount budgeted in each fund's budget and in no case shall the total appropriations of any budget be exceeded, except as provided pursuant to Section 129.06, Florida Statutes; and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the County or which are legally mandated by applicable law.]

Notwithstanding any provision in this Note to the contrary, in no event shall the interest contracted for, charged or received in connection with this Note (including any other costs or considerations that constitute interest under the laws of the State of Florida which are contracted for, charged or received) exceed the maximum rate of interest allowed under the State of Florida as presently in effect. In the event the maturity of this Note is accelerated or prepaid in accordance with the provisions hereof, then such amounts that constitute payments of interest, together with any costs or considerations which constitute interest under the laws of the State of Florida, may never exceed an amount which would result in payment of interest at a rate in excess of the nonusurious interest allowed by the laws of the State of Florida or the United States to the extent applicable, as presently in effect and to the extent an increase is allowable by such laws; and excess interest, if any, shall be cancelled automatically as of the date of such acceleration, or, if theretofore paid, shall be credited on the principal amount of the Note unpaid, but such crediting shall not cure or waive any default under the Agreement or the Resolution.

All payments made by the County hereon shall apply first to accrued interest, and then to the principal amount then due on this Note.

The County may prepay this Note as a whole or in part, at any time or from time to time, without penalty or premium, by paying to the Noteholder all or part of the Principal Sum of the Note, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment. Each prepayment of the Note shall be made on such date and in such principal amount as shall be specified by the County in a written notice delivered to the Noteholder not less than ten (10) days prior thereto. Prepayments by the County will be applied to the County's principal payment requirements in inverse order. Notice having been given as aforesaid, the Principal Sum of the Note stated in such notice or the whole thereof, as the case may be, shall become due and payable on the prepayment date stated in such notice, together with interest accrued and unpaid to the prepayment date on the principal amount then being paid; and the amount of principal and interest then due and payable shall be paid. If on the prepayment date moneys for the payment of the principal amount to be prepaid on such

Note, together with interest to the prepayment date on such principal amount, shall have been paid to the Noteholder as above provided and if notice of prepayment shall have been given to the Noteholder as above provided, then from and after the prepayment date interest on such principal amount of such Note shall cease to accrue. If said moneys shall not have been so paid on the prepayment date, such principal amount of such Note shall continue to bear interest until payment thereof at the rate or rates provided for in the Agreement.

This Note, when delivered by the County pursuant to the terms of the Agreement and the Resolution, shall not be or constitute an indebtedness of the County or of the State of Florida, within the meaning of any constitutional, statutory or charter limitations of indebtedness, but shall be payable solely from the Designated Revenues, as provided in the Agreement and the Resolution. No Noteholder shall ever have the right to compel the exercise of the ad valorem taxing power of the County or the State, or taxation in any form of any property therein to pay the Note or the interest thereon.

Upon the occurrence of an Event of Default relating to this Note, the Principal Sum of this Note may become or be declared due and payable before the Final Maturity Date in the manner, with the effect and subject to the conditions set forth in the Agreement and the Resolution. The Noteholder shall also have such other remedies as described in the Agreement.

If the Note shall be declared to be immediately due and payable or any amounts due on the Note shall remain unpaid on the tenth (10th) day following any scheduled payment date, the Note shall bear interest at the Default Rate (as defined in the Resolution) until all amounts then due under the Note are paid in full.

The County hereby waives demand, protest and notice of dishonor.

LEE COUNTY, FLORIDA

(SEAL)

Chair, Board of County Commissioners
of Lee County, Florida

ATTEST:

Clerk, Circuit Court of Lee County,
Florida and Ex-Officio Clerk of Lee
County, Florida